

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ARIELLA F.

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. L 2006051084

**DECISION**

Sandra L. Hitt, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH) heard this matter on November 28, 2006.

Martha Thompson, Fair Hearing Coordinator, represented the Westside Regional Center (Service Agency or WRC).

Claimant's mother (Deanna F.) represented Claimant, Ariella F. <sup>1</sup>

WRC submitted Exhibits 1-5, and Claimant submitted Exhibits A, B and C at the hearing. Claimant requested that the record be held open until December 1, 2006, to provide her with time to submit an additional exhibit, a letter from one of Claimant's physical therapists. WRC requested an additional week (until December 8, 2006) to object or otherwise respond to such exhibit. These requests were granted. On December 1, 2006, Claimant timely submitted a letter from Lola Gemme, PT, which was marked as Exhibit D. WRC timely responded to this submission by letter dated December 8, 2006. Exhibit D was admitted into evidence. WRC's response was marked as Exhibit 6; the parts of the letter that were evidentiary information were admitted into the record, and the parts of the letter that were legal argument were noted as such. Neither party objected to the other party's evidence or expert witnesses, except as indicated herein.

Oral and documentary evidence having been received and the matter having been submitted on December 8, 2006, the ALJ issues the following Decision.

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<sup>1</sup> Claimant's last name and that of her mother will be represented by the initial "F" herein, to protect the privacy of the minor and her family.

## **ISSUES**

1. Whether the Service Agency should be required to fund up to five hours of physical/occupational therapy (PT/OT) per week for Claimant.
2. Whether the Service Agency Center should reimburse Claimant's parents for money they have expended to fund Claimant's physical therapy over the past three years.

## **FINDINGS OF FACT**

1. The ALJ took official notice of OAH Case No. L-2002040262, A.F. vs. Westside Regional Center, a matter involving the same parties.
2. Claimant is an eight year old child with a diagnosis of severe mental retardation severe cerebral palsy, and convulsive epilepsy. Claimant has a G-tube inserted into her stomach to assist her with feeding. Claimant is largely immobile, but she can extend her arm partially, can use raking motions and grasp with her hands, and has started to "scoot" out of her bed. Claimant's seizures are controlled by medication, but she is physically fragile, and if she catches a cold or other such malady, she is subject to uncontrolled seizures. As a result, Claimant's parents have requested that her treatment be provided in the home, with the least amount of exposure to others, which could be counter-productive to her continued developmental progress. Claimant has made gains with in-home PT/OT funded by Claimant's parents. Claimant is currently receiving one-half hour of PT per week through the Los Angeles Unified School District (LAUSD). (Exhibits 1 & 4, and A, B & D.)
3. An Individual Program Plan (IPP) meeting was held in January 2006. The IPP document generated does not specifically call for any PT/OT; however, it states that Claimant's mother wants such services. (Exhibit 1.)
4. On March 24, 2006, Claimant requested a fair hearing. In her fair hearing request, Claimant indicated as her reason for requesting a hearing, that she needs PT every day and currently, she is receiving only one-half hour of PT per week through the school district. Claimant wants WRC to fund five hours per week of at-home PT/OT<sup>2</sup>. At hearing, Claimant requested reimbursement for expenses incurred by Claimant's parents to provide Claimant with in-home PT during the past three years. WRC objected to Claimant's raising the issue of reimbursement at the hearing, because this issue was not included in Claimant's fair hearing request. (Exhibit 4.) This issue was, in fact, not included in Claimant's fair hearing request and therefore, not properly before the ALJ.

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<sup>2</sup> In her fair hearing request, Claimant requested five hours per week of PT; however, at hearing, Claimant submitted that either PT or OT would be acceptable, as these services overlap.

5. Claimant's primary physician, Dr. Gary Gorlick, advised that it would be counter-productive for Claimant to travel to obtain therapy outside of the home, as she is very susceptible to contracting a virus. If Claimant contracts a virus, her seizures become uncontrollable, resulting in Claimant's losing weight and taking a very long time to recover, thus setting her development back. Dr. Gorlick also advised that Claimant needed PT on a daily basis, to prevent joint deformities and contractures and to stimulate further development. Dr. Gorlick noted that therapists as well as physicians who have evaluated Claimant have recommended that she receive more PT/OT. Finally, Dr. Gorlick opined that in-home PT/OT has helped Claimant to grow, gain weight, and not require frequent trips to the hospital. (Exhibit A.)

6. Dr. W. Donald Shields is a Professor of Pediatrics and Neurology at the Mattel Children's Hospital at UCLA, where Claimant has been followed since 1999. Dr. Shields opined that Claimant has made some developmental improvements in the past, which he believes are "probably related" to the continuous physical and occupational therapy that Claimant has been receiving. Dr. Shields recommends that Claimant continue to receive in-home PT/OT. (Exhibit B.)

7. Claimant's mother believes that Claimant wants to walk. The School District is in the process of obtaining a walker for Claimant. Claimant's mother believes that Claimant will require professional assistance to learn how to use the walker. Claimant enjoys ambulating, and expresses joy and happiness when doing so. She enjoys ambulation so much that she has developed the practice of "scooting" out of her bed, and her mother now has Claimant sleep on a pallet on the floor to avoid injury. Participating in ambulation increases the quality of life for this severely disabled child. Claimant can, with maximum assistance, tall kneel and weight bear through her arms and legs. This is beneficial in assisting her with strength and postural control. (Exhibit D.) Claimant has been holding her head up much longer since receiving in-home PT/OT, and she can move her arm much more freely. Claimant is not now receiving in-home PT/OT because of the difficulty in locating a therapist. When Claimant was receiving in-home PT-OT, she was able to ambulate somewhat with the assistance of the therapist (holding her up). Claimant was making progress to put her feet flat on the floor (as opposed to standing on her toes). Additionally, when Claimant ambulated with the assistance of her physical therapist, she did not "scissor" her legs as much. Claimant's mother cannot assist Claimant to ambulate in the same manner as the physical therapist. In addition to the fact that Claimant's mother is not professionally trained, she is a very petite person, and Claimant is growing in size. In the past several months since Claimant has not been receiving professional in-home PT/OT services, she has regressed.

8. It is WRC's position that five hours of PT per week for Claimant is unwarranted. After reviewing Exhibits A, B and D, WRC's clinical consultants, pediatrician Alicia Bazzano, M.D., pediatric neurologist Roger Huf, M.D., and physical therapist consultant Gail Smith, did not recommend five hours of PT per week for Claimant. The basis for their non-recommendation was that Exhibits A, B and D were "vague" and contained no specific

descriptions of developmental improvements or well defined goals for Claimant. (Exhibit 6.) When considering a request for PT/OT, the Service Agency seeks to review assessments, goals, and progress reports. However, if PT is to be provided, WRC does not object to Claimant's having the PT provided in-home.

9. Gail Smith, physical therapist consultant for WRC, is familiar with Claimant and her request. Ms. Smith recommends that Claimant's caregivers continue to provide stretching and exercises with claimant to be sure she is not losing range of motion. In Ms. Smith's opinion, a course of professional physical therapy twice weekly is appropriate when someone is making significant progress toward goals, typically after an injury. Ms. Smith has never before seen a recommendation for a child for PT five times a week, although she is aware of instances when hospital patients have received PT five times a week. Ms. Smith does not believe that Claimant will be able to use a walker in a functional manner. Ms. Smith opined that Claimant does not have the cognitive ability to learn to walk and that at any rate, Claimant is not ready to walk. Claimant has difficulty holding her head up for long periods of time and she does not crawl. (Exhibit 1). Ms. Smith believes that Claimant's needs are served by a "maintenance program" wherein parents and other caregivers are trained to provide Claimant with stretching and exercises, and provided with some professional monitoring to ensure that Claimant is not losing range of motion.

10. Claimant's mother believes that, given Claimant's severe condition, she is in as much need of five days per week of physical therapy as someone in a hospital. Claimant's mother saw improvement in Claimant's fine and gross motor skills after Claimant was provided with professional in-home PT/OT.

## **DISCUSSION AND CONCLUSIONS OF LAW**

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) is a comprehensive statutory scheme designed to provide supports and services for persons with developmental disabilities. The Act has a two-fold purpose: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community; and (2) to enable developmentally disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code<sup>3</sup>, §§ 4501, 4509, 4685, 4750 & 4751; see generally *Association for Retarded Persons v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) The Department of Developmental Services (DDS) is the state agency required to implement the Lanterman Act. It carries out that responsibility by delivering its services through the various Regional Centers located statewide.

[T]he Legislature has fashioned a system in which both state agencies and private entities have functions. Broadly, DDS, a state agency, "has jurisdiction over the execution of the laws relating to the care, custody, and

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<sup>3</sup>All references to the Code herein are to the Welfare and Institutions Code, unless otherwise indicated.

treatment of developmentally disabled persons” (§4416), while “Regional Centers,” operated by private nonprofit community agencies under contract with DDS, are charged with providing developmentally disabled persons with “access to the facilities and services best suited to them throughout their lifetime” (§4620). (*Association of Retarded Persons, supra*, 38 Cal.3d at p.389.)

2. Although there was little evidence of assessments, goals, and progress reports in the record, nonetheless, there was sufficient evidence to support Claimant’s request. Claimant enjoys ambulating and expresses happiness and joy when she is participating in ambulation. Participation in ambulation increases the quality of life for this severely disabled child (Finding 7). After receiving in-home PT/OT, Claimant achieved some physical strength in her arms, hands and legs and improved her fine and gross motor skills. Claimant was able to hold her head up longer, to “tall kneel” and to weight bear through her legs and arms (Findings 7 and 10). Claimant was also able to participate in ambulation with a therapist holding her up, and was learning to place her feet flat on the floor, as opposed to standing on her toes. In-home PT/OT has helped Claimant to grow, gain weight, and require fewer trips to the hospital (Findings 4, 5, 6, 7 and 10).

3. Claimant has shown regression since the termination of professional in-home physical therapy services, and may regress further unless these services are reinstated promptly (Finding 7). Claimant has sustained her burden of proving that five hours per week of in-home PT/OT are necessary to meet her needs at this time.

4. The issue of reimbursement was not properly before the ALJ, as it was not included in the fair hearing request (Finding 4) and the Service Agency did not have notice and an adequate opportunity to respond to this request. Therefore, the issue of reimbursement will not be decided in this proceeding.

## **ORDER**

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Service Agency shall provide funding for five hours per week of in-home PT/OT for Claimant, Ariella F.

Date: December 19, 2006

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SANDRA L. HITT  
Administrative Law Judge  
Office of Administrative Hearings

## **NOTICE**

**This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**